

MAR 06 2002

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR 5114

DATE COMPLAINT FILED: 10/12/00

DATE OF NOTIFICATION: 03/01/00

DATE ACTIVATED: 04/20/2001

STATUTE OF LIMITATIONS: 03/01/05

STAFF MEMBER: Tracey Robinson

COMPLAINANT: Donald F. McGahn, II

RESPONDENTS: The Honorable James H. Maloney  
Friends of Jim Maloney, Inc., and Patricia Draper, as treasurer  
Maloney for State Senate '88, and Paul Norguiera, as treasurer  
Connecticut Democratic Leadership Roundtable  
and Kenneth J. Curran, as treasurer  
Charter Oak Democratic Victory Fund and Dianne Eppinger, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 441f  
2 U.S.C. § 441a (f)  
2 U.S.C. § 441a(a)(5)  
11 C.F.R. § 110.3 (d)  
11 C.F.R. § 110.4 (b)(iii)  
11 C.F.R. §§ 110.10 (a), (b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

STATE AGENCIES CHECKED: Connecticut Secretary of State

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed by Donald F. McGahn, II against James H. Maloney, Friends of Jim Maloney, Inc. ("the Federal Committee"), Maloney for State Senate '88 ("State Committee") and two state political action committees, the Connecticut Democratic Leadership Roundtable ("Roundtable") and the Charter Oak Democratic Victory Fund ("Charter

0643:504:40:22

2001-03-01 10:00

RECEIVED  
FEDERAL ELECTION  
COMMISSION

Oak"). The complaint alleges that Maloney illegally transferred funds to his federal campaign committee using the State Committee as a conduit.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Applicable Law**

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits persons from making contributions in someone else's name, allowing one's name to be used for such contributions, knowingly accepting contributions made in the name of another or knowingly assisting either the making or accepting of a contribution in the name of another. 2 U.S.C. § 441f. *See also* 11 C.F.R. § 110.4(b)(1)(iii). The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i).

Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. 11 C.F.R. § 110.3(d).

Except as provided in 26 U.S.C. §§ 9001, *et seq* (Presidential Election Campaign Fund Act) and 26 U.S.C. §§ 9031, *et seq* (Presidential Primary Matching Payment Account Act), candidates for federal office may make unlimited expenditures from personal funds. 11 C.F.R. § 110.10(a). "Personal funds" are any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right to access or control over, and with respect to which the candidate had either legal and rightful title or equitable interest. 11 C.F.R. § 110.10(b).

Pursuant to 2 U.S.C. § 441a, all contributions made or received by more than one affiliated committee, regardless of whether they are political committees shall be considered to be made or received by a single political committee. 11 C.F.R. § 110.3(a). *See also*, 11 C.F.R. § 100.5.

## **B. Background**

James "Jim" Maloney unsuccessfully ran for state senator of Connecticut's 24<sup>th</sup> district in 1988; during this campaign, he made personal loans to his State Committee totaling \$32,825. The State Committee has remained active since the 1988 election, concurrently with Mr. Maloney's 1996, 1998 and 2000 congressional campaigns. After the 1988 election, there was little reported activity by the State Committee until 1994, when the State Committee made its first loan repayment to Maloney. At the same time, i.e., late 1994, the State Committee began to receive contributions at irregular intervals, which it used to repay the loans from Maloney.<sup>1</sup>

## **C. Allegations**

In general, the complainant alleges that Roundtable and Charter Oak, whose officials have close ties to Maloney, made contributions to the State Committee, which used the funds to pay off pre-existing loans from the candidate, and that Maloney then loaned those funds to his federal campaign. The Complainant alleges that Roundtable, Charter Oak and the Maloney State

---

<sup>1</sup>Based this Office's review of the disclosure reports that the State Committee filed with the Connecticut Secretary of State and the Federal Committee's reports, there was one such contribution and subsequent loan repayment in 1994, three in 1996, one in 1999 and three in 2000. The state disclosure reports revealed other contributions made by three PACs that were not referenced in the complaint. These contributions also appear to have been used by the State Committee for the repayment of the loan to Maloney. On November 1, 1994, the Committee for Connecticut contributed \$3,000 to the State Committee. On November 4, 1994, the State Committee repaid Maloney \$3,750 on the loan. On October 1, 1996, the Connecticut Leadership Network made a \$2,500 contribution to the State Committee. On October 21, 1996, the State Committee made a \$2,200 loan repayment. On April 17, 1999, the Working Families PAC made a \$2,000 contribution to the State Committee. On July 1, 1999, the State Committee paid Maloney \$2,000 towards the loan.

Committee intentionally devised a plan to circumvent the Act whereby Roundtable and Charter Oak made contributions to the State Committee for repayment of the personal loan, so that Maloney could use the funds for his federal campaign.

The complaint further alleges that Maloney and the State Committee had strong ties to Charter Oak and Roundtable making them affiliated entities, and that the contributions to the State Committee were intended to be passed on to the Federal Committee. Maloney was the treasurer of Charter Oak in 1996. Ken Curran, campaign finance director of the Maloney Federal Committee, is also the treasurer for the Roundtable.

On October 21, 1996, Charter Oak contributed \$2,200 to the State Committee. On November 18, 1996, Charter Oak contributed \$500 to the State Committee. The State Committee made loan payments to Maloney in the amount of \$2,200 on October 21, 1996, and \$500 on November 18, 1996.

On December 5, 1999, Roundtable contributed \$7,500 to the State Committee, and contributed another \$2,000 on December 17, 1999. The State Committee made a loan payment to Maloney in the amount of \$9,000, also on December 17, 1999. On January 11, 2000, Roundtable contributed \$2,200 to the State Committee. The State Committee paid \$2,500 on the loan to Maloney, also on January 11, 2000. On June 20, 2000 and June 29, 2000, Roundtable made two \$5,000 contributions to the State Committee. On June 20 and June 29, 2000, the State Committee made two \$5,000 loan payments to Maloney.

#### **D. Legal Analysis**

It is possible, as alleged in the complaint, that Charter Oak and Roundtable knew or even hoped that the State Committee would use the funds to repay the candidate's personal loans and

22-04-405-3493

that Maloney would use the money to aid in his bid for the congressional seat.<sup>2</sup> However, a donor's mere hope, or even intent that contributions to retire a debt from a previous campaign will indirectly aid a candidate in his or her current federal election campaign does not render them contributions to the federal committee. Moreover, a candidate may use the proceeds from the repayment of a prior personal loan to a state committee to make another personal loan to his or her federal committee without violating the Act.

In previous cases, the Commission has found no reason to believe where a candidate used proceeds from the repayment of a prior personal loan to a state committee towards his or her federal campaign. For example, in Pre-MUR 342 (Johns), the Respondent, Chris Johns, unsuccessfully ran for Lieutenant Governor of Louisiana and then ran for a congressional seat in Louisiana's Seventh District. Johns made personal loans to his state and federal committees. Johns, having kept his state committee active during his federal campaign, received corporate contributions to his state committee. The state committee then repaid Johns on his loans and he then contributed those funds to his federal campaign. The Commission found no reason to believe that the loans to the state committee and the subsequent loan repayments were illegal funds transfers in violation of the Act. *See also* MUR 4314 (Sherman), in which the Commission found no reason to believe there had been any improper transfer in violation of 11 C.F.R. § 110.3(d) where a candidate who simultaneously raised funds for his state and federal campaigns used the repayment of loans from his state committees to contribute to his federal committee.

The Maloney State Senate Committee could legitimately use the proceeds to pay off the personal loan from the candidate. The candidate was also free to use the proceeds of the loan

---

<sup>2</sup> Neither Charter Oak nor Roundtable contributed to the Maloney federal campaign.

1 repayment for any legal purpose, which includes making a personal loan to his federal  
2 committee. Moreover, the allegation of affiliation is of no legal consequence in this matter  
3 since neither Roundtable nor Charter Oak made contributions to the federal campaign. For these  
4 reasons, this Office recommends that the Commission find no reason to believe that any of the  
5 above-named Respondents violated 2 U.S.C. § 441a, 2 U.S.C. § 441f, or 11 C.F.R § 110.3(d) in  
6 connection with the transactions in the complaint.

7 Consistent with the Commission's treatment of materials to release to the public in MUR  
8 5119 pending the resolution of the appeal in American Federation of Labor and Congress of  
9 Industrial Organizations v. FEC, 177 F.Supp.2d 48 (D.D.C. 2001), this Office intends to provide  
10 the complainant, the respondents and the public with copies of only the certification of the  
11 Commission's vote and this General Counsel's Report.

12  
13 **III. RECOMMENDATIONS**

- 14 1. Find no reason to believe that James "Jim" Maloney, Friends of Jim Maloney, Inc.  
15 and Patricia Draper, as treasurer, Maloney for State Senate '88 and Paul Norguiera, as  
16 treasurer, Connecticut Democratic Leadership Roundtable and Kenneth J. Curran, as  
17 treasurer, or Charter Oak Democratic Victory Fund and Dianne Eppinger, as treasurer,  
18 violated 2 U.S.C. § 441a, 2 U.S.C. § 441f, or 11 C.F.R. § 110.3(d) in connection with  
19 the transactions identified in the complaint.  
20 2. Approve the appropriate letters.  
21 3. Close the file.  
22

23  
24  
25 Lawrence H. Norton  
26 General Counsel  
27

28  
29  
30 3/5/02  
31 Date

BY:


Rhonda J. Vosdigh  
Rhonda J. Vosdigh  
Associate General Counsel



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lawrence H. Norton  
General Counsel

FROM: Office of the Commission Secretary 

DATE: March 13, 2002

SUBJECT: MUR 5114 – First General Counsel's Report  
Dated March 5, 2002

The above-captioned document was circulated to the Commission  
on Wednesday, March 6, 2002.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX FOR THE RECORD</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, March 19, 2002.

Please notify us who will represent your Division before the Commission on this matter.

22.04.405.3496